

27. For each of the modifications listed above that occurred at the Cardinal Power Plant, neither AEP, Ohio Power Company, nor Cardinal Operating Company obtained a PSD permit pursuant to 40 C.F.R. § 52.21(i), a nonattainment NSR permit pursuant to OAC 3745-31, or a minor NSR permit pursuant to OAC 3745-31. In addition, for modifications after 1992, no information was provided to the permitting agency of actual emissions after the modification as required by 40 C.F.R. § 52.21(b) (21) (v).

Conesville Power Plant

28. Between 1979 and the date of this Notice, AEP and C&SOE Company have made "modifications" as defined by 40 C.F.R. § 52.21(b) and OAC 3745-31 at the Conesville Power Plant. These modifications included, but are not limited to, the following individual modifications or projects:
- (1) replacement of 4 cyclones, primary burners, and re-entrant throats at Units 1 and 2 during approximately 1987;
 - (2) replacement of furnace floor tubing at Units 1 and 2 during 1990 and approximately 1989 respectively;
 - (3) installation of new HP/Intermediate pressure turbine rotor and turbine seals at Unit 1 during approximately 1990;
 - (4) replacement of economizer bank at Unit 3 during approximately 1988; and
 - (5) replacement of secondary superheater outlet head at Unit 3 during approximately 1993.
29. For each of the modifications listed above that occurred at the Conesville Power Plant, neither AEP nor C&SOE Company obtained a PSD permit pursuant to 40 C.F.R. § 52.21(i), a nonattainment NSR permit pursuant to OAC 3745-31, or a minor NSR permit pursuant to OAC 3745-31. In addition, for modifications after 1992, no information was provided to the permitting agency of actual emissions after the modification as required by 40 C.F.R. § 52.21(b) (21) (v).
30. All of the modifications at the Muskingum River Station Plant, the Cardinal Plant and the Conesville Plant do not fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b) (2) (iii) and OAC 3745-31. Each of these changes was an expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life. In many instances, the replacement component was substantially redesigned in such a way that it resulted in increased capacity, regained lost capacity, and/or extended the life of the unit. That the "routine maintenance, repair and replacement" exemption does

not apply to such capital expenditures was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld by the court of appeals in 1990. Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

31. None of the modifications at the Muskingum River Station Plant, the Cardinal Plant and the Conesville Plant fall within the exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(f) for an "increase in the hours of operation or in the production rate." This exemption is limited to stand-alone increases in operating hours or production rates, not where such increases follow or are otherwise linked to construction activity. That the hours of operation/rates of production exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld twice by the court of appeals, in 1989 and in 1990. Puerto Rican Cement Co. v. EPA, 889 F.2d 292 (1st Cir. 1989); Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).
32. All of the modifications that occurred at the Muskingum River Station Plant, the Cardinal Plant and the Conesville Plant do not fall within the "demand growth" exemption found at 40 C.F.R. § 52.21(b)(33)(ii) because for each modification, a physical change was performed which resulted in an emissions increase.
33. Each of the modifications that occurred at the Muskingum River Station Plant, the Cardinal Plant and the Conesville Plant resulted in a significant net emissions increase for, NO_x, SO₂, and/or PM. 40 C.F.R. § 52.21(b)(3)(i) and OAC 3745-31.
34. Therefore, AEP, Ohio Power Company, Cardinal Operating Company and C&SOE Company violated and continue to violate 40 C.F.R. § 52.21 and OAC 3745-31 by constructing and operating modifications at the Muskingum River Station Plant, the Cardinal Plant and the Conesville Plant without the necessary permit required by the Ohio SIP.
35. Each of these violations exists from the date of start of construction of the modification and continues until the appropriate NSR permit is obtained and the necessary pollution control equipment is operated as required by the Ohio SIP.

Indiana Facility

Tanners Creek

36. Between 1979 and the date of this Notice, AEP and Indiana Michigan Power Company have made "modifications" as defined by the Indiana SIP, 40 C.F.R. § 52.21(b), APC-19 and IAC 2-3 at the Tanners Creek Power Plant. These modifications included, but are not limited to, the following individual modifications or projects:
- (1) replacement of reheater outlet bank and headers at Unit 2 during approximately 1992;
 - (2) replacement of the outlet bank and outlet headers for the reheater, the primary superheater outlet banks, outlet headers, and vestibule casing for Unit 3 constructed during approximately 1988;
 - (3) replacement of reheater inlet and intermediate banks at Unit 3 during approximately 1993;
 - (4) replacement of eleven cyclone furnaces during approximately 1987;
 - (5) replacement of tubular air heater at Unit 4 during approximately 1992;
 - (6) replacement of the furnace arch and floor tubes at Unit 4 during approximately 1989;
 - (7) replacement of main condenser tubes at Unit 4 during approximately 1992;
 - (8) replacement of high pressure feedwater heaters at Unit 4 during approximately 1994; and
 - (9) replacement of primary furnace floor and side wall tubes at Unit 4 during approximately 1995.
37. For each of the modifications listed above that occurred at the Tanners Creek Plant, neither AEP nor Indiana Michigan Power Company obtained a PSD permit pursuant to 40 C.F.R. § 52.21, a nonattainment NSR permit pursuant to APC 19 and IAC 2-1, or a minor NSR permit pursuant to APC 19 and IAC 2-1. In addition, for modifications after 1992, no information was provided to the permitting agency of actual emissions after the modification as required by 40 C.F.R. § 52.21(b)(21)(v).
38. All of the modifications at the Tanners Creek Plant do not fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii), APC 19 and IAC 2-3. Each of these changes was an expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life. In each instance, the change was performed to increase capacity, regain lost capacity, and/or extend the life of the unit. In many instances, the replacement component was substantially redesigned in such a way that it resulted in increased capacity, regained lost capacity, and/or extended the life of the unit. That the

"routine maintenance, repair and replacement" exemption does not apply to such capital expenditures was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld by the court of appeals in 1990. Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

39. None of the modifications at the Tanners Creek Plant, fall within the exemption found at 40 C.F.R. § 52.21(b) (2) (iii) (f) for an "increase in the hours of operation or in the production rate." This exemption is limited to stand-alone increases in operating hours or production rates, not where such increases follow or are otherwise linked to construction activity. That the hours of operation/rates of production exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld twice by the court of appeals, in 1989 and in 1990. Puerto Rican Cement Co. v. EPA, 889 F.2d 292 (1st Cir. 1989); Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).
40. All of the modifications at the Tanners Creek Plant do not fall within the "demand growth" exemption found at 40 C.F.R. § 52.21(b) (33) (ii) because for each modification, a physical change was performed which resulted in an emissions increase.
41. Each of these modifications resulted in a net significant increase in emissions from the Tanners Creek Plant for NO_x, SO₂ and/or PM. 40 C.F.R. § 52.21(b) (3) (i), APC 19 and IAC 2-3.
42. Therefore, AEP and Indiana Michigan Power Company violated and continue to violate 40 C.F.R. § 52.21, APC 19, and IAC 2-1 by constructing and operating modifications at the Tanner's Creek Plant without the necessary permit required by the Indiana SIP.
43. Each of these violations exists from the date of start of construction of the modification and continues until the appropriate NSR permit is obtained and the necessary pollution control equipment is operated as required by the Indiana SIP.

West Virginia Facilities

Philip Sporn Plant

44. Between 1979 and the date of this Notice, AEP, Appalachian Power Company, AEP Service Corporation, Central Operating Company and Ohio Power Company made "modifications" as defined by the West Virginia SIP, 45 C.S.R. § 14-2.27 at the Philip Sporn Power Plant. These modifications included, but are not limited to, the following individual modifications or projects:
- (1) replacement of lower waterwall headers in the rear and side wall at Unit 1 during approximately 1990;
 - (2) replacement of rear and side wall lower furnace headers and sealing of the skirt and trough at Units 2, 3, and 4 approximately during approximately 1990 to 1991;
 - (3) replacement of all tubes in the main condensers at Units 1, 2, and 4 during approximately 1990 to 1991;
 - (4) replacement of the primary and reheat and superheater outlet banks and outlet headers at Unit 4 during approximately 1990;
 - (5) replacement of the upper three banks of the first reheater and the first reheater inlet header at Unit 5 during approximately 1990;
 - (6) replacement of low pressure, high pressure and auxiliary condensers tubes at Unit 5 during approximately 1992;
 - (7) replacement of all lower furnace tubes and related components at Unit 5 during approximately 1993; and
 - (8) replacement of the main steam stop valves at Unit 5 during approximately 1994.
45. For each of the modifications listed above that occurred at the Philip Sporn Plant, neither AEP, Appalachian Power Company, Central Operating Company nor Ohio Power Company obtained a PSD permit pursuant to 45 C.S.R. § 14-6.1., or a minor NSR permit pursuant to 45 C.S.R. § 13-4. In addition, for modifications after 1992, no information was provided to the permitting agency of actual emissions after the modification as required by 40 C.F.R. § 52.21(b) (21) (v).

Mitchell Plant

46. Between 1979 and the date of this Notice, AEP and Ohio Power Company made "modifications" as defined by the West Virginia SIP, 45 C.S.R. § 14-2.27 at the Mitchell Power Plant. These modifications included, but are not limited to, the following individual modifications or projects:
- (1) redesign of the economizer by installation of additional economizer surface at Units 1 and 2 during approximately 1987 to 1988;
 - (2) replacement of all tubes in the main condensers at Units 1 and 2 during approximately 1989;

(3) conversion and redesign of the #15 MBF pulverizer to an MPS-89 pulverizer at Unit 1 during approximately 1990 to 1991;
(4) replacement of the low pressure reheat outlet bank at Units 1 and 2 during approximately 1992 to 1993; and
(5) replacement of all front tube screens at Unit 1 during approximately 1997.

47. For each of the modifications listed above that occurred at the Mitchell Plant, neither AEP, nor Ohio Power Company obtained a PSD permit pursuant to 45 C.S.R. § 14-6.1., or a minor NSR permit pursuant to 45 C.S.R. § 13-4. In addition, for modifications after 1992, no information was provided to the permitting agency of actual emissions after the modification as required by 40 C.F.R. § 52.21(b)(21)(v) and for modifications after December 23, 1996 as required by 45 C.S.R. § 14-2.44.b.
48. All of the modifications at the Philip Sporn and Mitchell Plant do not fall within the "routine maintenance, repair and replacement" exemption found at 45 C.S.R. § 14-2.27.a. Each of these changes was an expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life. In many instances, the replacement component was substantially redesigned in such a way that it resulted in increased capacity, regained lost capacity, and/or extended the life of the unit. That the "routine maintenance, repair and replacement" exemption does not apply to such capital expenditures was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld by the court of appeals in 1990. Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).
49. None of the modifications at the Philip Sporn and Mitchell Plant fall within the exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(f) for an "increase in the hours of operation or in the production rate." This exemption is limited to stand-alone increases in operating hours or production rates, not where such increases follow or are otherwise linked to construction activity. That the hours of operation/rates of production exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld twice by the court of appeals, in 1989 and in 1990. Puerto Rican Cement Co. v. EPA, 889 F.2d 292 (1st Cir. 1989); Wisconsin Electric Power Co. v. Reilly, 893 F.2d

901 (7th Cir. 1990).

50. All of the modifications at the Philip Sporn and Mitchell Plants do not fall within the "demand growth" exemption found at 40 C.F.R. § 52.21(b)(33)(ii) and 45 C.S.R. § 14-2.44.b, as approved by EPA as part of the West Virginia SIP on December 23, 1996, because for each modification, a physical change was performed which resulted in an emissions increase.
51. Each of the modifications resulted in a net significant increase in emissions from the Philip Sporn and Mitchell Plants for NO_x, SO₂ and/or PM. 45 C.S.R. § 14-2.26.a.
52. Therefore, AEP, and Ohio Power Company violated and continue to violate 45 C.S.R. § 14-6.1, and 45 C.S.R. § 13-4 by constructing and operating modifications at the Philip Sporn and Mitchell Plants without the necessary permit required by the West Virginia SIP.
53. Each of these violations exists from the date of start of construction of the modification and continues until the appropriate NSR permit is obtained and the necessary pollution control equipment is operated as required by the West Virginia SIP.

ENFORCEMENT

Section 113(a)(1) of the Act provides that at any time after the expiration of 30 days following the date of the issuance of this Notice, the Regional Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation before January 30, 1997, and no more than \$27,500 per day for each violation after January 30, 1997.

OPPORTUNITY FOR CONFERENCE

Respondents may, upon request, confer with EPA. The conference will enable Respondents to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. Respondents have a right to be represented by counsel. A request for a conference must be made within 10 days of receipt of this Notice, and the request for a conference or other inquiries concerning the Notice should be made in writing to:

Gregory Jaffe
Senior Counsel
Air Enforcement Division
U. S. Environmental Protection Agency
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June 1, 1988
Date

Bruce C. Buckheit
Bruce C. Buckheit, Director
Air Enforcement Division
Office of Enforcement
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U.S. EPA